

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Hastings College
800 Turner Avenue
Hastings, Nebraska 68901

EPA ID Number: NE0000302505

Respondent.

Proceeding under Section 3008 (a) and (g) of
the Resource Conservation and Recovery Act
as amended, 42 U.S.C. § 6928(a) and (g).

CONSENT AGREEMENT/
FINAL ORDER

Docket No. RCRA-07-2004-0079

CONSENT AGREEMENT/FINAL ORDER

This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA" or "the Act"), and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Title 40 C.F.R. Part 22 ("Consolidated Rules of Practice").

The Complainant is the Director of the Air, RCRA, and Toxics Division of the United States Environmental Protection Agency ("EPA"), Region VII, who has been duly delegated the authority to bring this action. The Respondent is Hastings College, a private college located in Hastings, Nebraska. The authority to execute the Complaint portion of this Consent Agreement/Final Order is provided to the Regional Administrators by EPA Delegation No. 8-9-A. The Regional Administrator has delegated this authority to the Director of the Air, RCRA and Toxics Division of EPA, Region VII, by EPA Delegation No. R7-8-009-A, dated June 30, 1997.

Complainant and Respondent have agreed to a settlement of the following Factual Allegations, and thus this action is simultaneously commenced and concluded pursuant to Rules

22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3). This Consent Agreement/Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement/Final Order.

The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska (hereinafter Title 128). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997. Based upon the facts alleged in this Consent Agreement/Final Order and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA on October 26, 1990, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Consent Agreement/Final Order.

FACTUAL ALLEGATIONS

Jurisdiction, Statutory and Regulatory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).
2. This Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent violated the regulations at 128 C.S.R. 19 002 and 40 C.F.R. Part 262.

3. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides if EPA determines that any person has violated or is in violation of any requirement of Subchapter III, EPA may issue an order assessing a civil penalty for any past or current violation, require compliance, or both.
4. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA must consider various factors in assessing a penalty, including the seriousness of the violations and any good faith efforts of Respondent to comply with the applicable requirements.
5. Respondent is a private college located in Hastings, Nebraska and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
6. On November 29, 2000, Respondent filed a Notification of Hazardous Waste Activity with the Nebraska Department of Environmental Quality indicating that Respondent was operating as a Conditionally Exempt Small Quantity Generator of characteristic and F, P, and U listed hazardous wastes.
7. As a result of Respondent's operations, Respondent generates solid and hazardous waste. This includes hazardous waste generated by Respondent in its Chemistry Laboratories located in Steinhart Hall of the Science Building.
8. On May 6, 2003, Complainant conducted a RCRA Compliance Evaluation Inspection at Respondent's facility. At the time of the May 6, 2003, inspection, Complainant observed numerous containers of waste in rooms S201, 217 and 207 in Steinhart Hall of the Science Building. At the time of the May 6, 2003, inspection Respondent had not made a hazardous waste determination on these containers of solid waste.
9. Subsequent to the May 6, 2003, inspection, Respondent conducted a hazardous waste determination on the solid wastes described in paragraph 8 above and observed by Complainant. As a result, on May 14, 2003, Respondent identified and shipped 11 hazardous waste streams for off-site disposal. These waste streams were: 19 kilograms of P077, U188, U144, D011, D007, D005, D001 hazardous waste; 1 kilogram of P104, D003, D011 hazardous waste; 5 kilograms of D001, D005, D007 hazardous waste; 5 kilograms of D001, U056, U112 hazardous waste; 1 kilogram of U133 hazardous waste; 1 kilogram of D003 hazardous waste, 6 kilograms of D009 hazardous waste; 15 kilograms of U151, D009 hazardous waste; 3 kilograms of D002, U148 hazardous waste; 2 kilograms of D009 hazardous waste; and 2 kilograms of D001 hazardous waste. A total of 60 kilograms of hazardous waste was shipped for offsite disposal, including 1.9 pounds of acutely hazardous waste.

10. A Notice of Violation was issued to Respondent by EPA after the May 6, 2003, inspection for failure to make a hazardous waste determination. The violation observed during the May 6, 2003, inspection forms the basis for the allegations below.

Violation

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

11. Complainant hereby incorporates the allegations contained in paragraphs 1 through 10 above, as if fully set forth herein.

12. Pursuant to 128 C.S.R. 19 002 and 40 C.F.R. § 262.11 a generator of "solid waste," as that term is defined in 128 C.S.R. 4 002 and 40 C.F.R. § 261.2 using the methods prescribed in 128 C.S.R. Ch. 5, 6, 8 and 11 through 15, must determine if the solid waste is a hazardous waste.

13. At the time of the May 6, 2003, inspection, Respondent had generated and was storing numerous containers of solid waste in rooms S201, 217 and 207 in Steinhart Hall of the Science Building. Respondent had not conducted a hazardous waste determination on these wastes.

14. Respondent's failure to make a hazardous waste determination is a violation of 128 C.S.R. 19 002 and 40 C.F.R. § 262.11.

15. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that a civil penalty of \$40,000.00 be assessed against Respondent for its failure to comply with 128 C.S.R. 19 002 and 40 C.F.R. § 262.11.

CONSENT AGREEMENT

16. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement/Final Order.

17. Respondent admits the jurisdictional allegations of this Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

18. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement/Final Order.

19. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement/Final Order.

20. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
21. This Consent Agreement/Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.
22. Nothing contained in the Final Order portion of this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
23. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.
24. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a penalty of \$40,000.00 as set forth in Paragraph I of the Final Order.
25. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.
26. This Consent Agreement/Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
27. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 12 of the Final Order, that all requirements hereunder have been satisfied.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Consent Agreement/Final Order, Respondent shall pay a civil penalty of \$40,000.00.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
U.S. EPA Region VII
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the Docket Number on the check. A copy of the check shall also be mailed to:

Mr. Brian Mitchell
ARTD/RESP
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

Respondent shall take the following actions within the specified time periods, and according to the terms and conditions specified in the paragraphs below.

4. Respondent shall submit the following information to EPA on September 15, 2004, for the time period covering February 15, 2004, to August 15, 2004 and on March 15, 2005, for the time period covering August 15, 2004, to February 15, 2005:

A. For each regulated waste generated at the Chemistry Department or any other portion of Respondent's facility, Respondent shall:

- a. Identify the waste generated,
- b. Identify the amount of waste generated,
- c. Provide the date such waste was generated,
- d. Provide a detailed description of the process which generated the waste,
- e. State whether the waste is a hazardous waste or not, list all applicable EPA hazardous waste codes, and provide a detailed discussion of how the hazardous waste determination was conducted (i.e. process knowledge, MSDSs, analytical testing, etc.),

- f. Provide a detailed discussion on how the waste was managed on-site, and
- g. Provide records documenting the date, amount, and where the waste was disposed (i.e., bill of lading copy, contractual agreement copy, hazardous waste manifest copy, etc.).

5. Reporting to EPA: All documents required under this Consent Agreement/Final Order, shall be submitted to:

Brian Mitchell
RCRA Compliance Officer
ARTD/RESP
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101

C. Parties Bound

6. This Final Order portion of this Consent Agreement/Final Order shall apply to and be binding upon Complainant and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

D. Reservation of Rights

7. Notwithstanding any other provision of this Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Consent Agreement/Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms herein, or to seek any other remedy allowed by law.

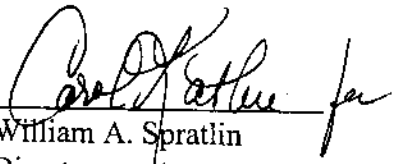
8. Complainant reserves the right to take enforcement action against Respondent for any other violations of RCRA and its implementing regulations not set forth herein and to enforce the terms and conditions of this Complaint and Consent Agreement/Final Order.

9. Except as expressly provided herein, nothing in this Consent Agreement/Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

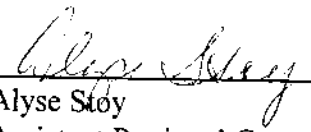
10. Notwithstanding any other provisions of this Consent Agreement/Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.
11. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.
12. The provisions of this Consent Agreement/Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

3/24/04
Date


William A. Spratlin
Director
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region VII

3/17/04
Date


Alyse Stoy
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

RESPONDENT:
HASTINGS COLLEGE

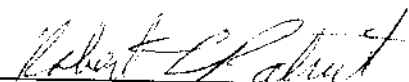
3/12/04
Date

Name Dennis K. Hines

Title V. P. Finance

Address P.O. Box 269
Hastings, Ne. 68401

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

Date April 1, 2004

IN THE MATTER OF Hastings College, Respondent
Docket No. RCRA-07-2004-0079

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement/Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Alyse Stoy
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

David Fisher
Dunmire, Fisher & Hastings
800 West 3rd Street
Suite 202
Hastings, Nebraska 68902-1044

Dated: 7/1/04


Kathy Robinson
Regional Hearing Clerk